The Hon'ble Sri Justice K.C. Bhanu

W.P. Nos. 11627, 11651 and 11652 of 2005

Dt: 27-07-2005

W.P.No.11627 of 2005

Between:

B.Ganga Ram

Petitioner

And

1. Sri Rama Grameena Bank, Nizamabad and others

Respondents

W.P.No.11651 of 2005

Between:

B.Nagesh Reddy and another

Petitioners

And

1. Sri Rama Grameena Bank, Nizamabad and others

Respondents

W.P.No.11652 of 2005

Between:

N.Satyam

Petitioner

And

1. Sri Rama Grameena Bank, Nizamabad and others

Respondents

The Hon'ble Sri Justice

K.C. Bhanu

W.P. Nos. 11627, 11651 and 11652 of 2005

COMMON ORDER:

The issue involved in all these writ petitions is common, hence they are disposed of by this common order.

W.Ps. 11651 and 11652 of 2005 are filed challenging

the proceedings of the 1st respondent dated 20.5.2005 whereby the non-official respondent is promoted overlooking the petitioners to the post of Officer Scale-II whereas W.P. 11627 of 2005 is filed challenging the action of the 1st respondent in filling up all the 6 posts of Scale-II Officer by Open Category without providing one post for S.C. candidate, as illegal and arbitrary.

The case of the petitioners in all these writ petitions is that they are seniors and though they attended the interview conducted for the post of Officer Scale-II (petitioners in W.P. 11651 of 2005 and W.P. 11627 of 2005) and for the post of Officer Scale-I (petitioner in W.P. 11652 of 2005) and are fully eligible, the respondent-authorities have not given promotions to them. The promotions for the said posts should be on the basis of seniority-cum-merit but the same is violated in the case of the petitioners. It is the further case of the petitioner in W.P. 11627 of 2005 that the 1st respondent has notified 6 posts of Scale-II Officers and one post out of them should be reserved for the SCs, but the 1st respondent did not do so and proceeded to fill up all the 6 posts in open category. He is the only eligible SC Officer to the Scale-II post by virtue of reservation and hence denial of promotion to him is illegal and arbitrary.

On the other hand, it is the case of the respondents that the respondent-bank did not commit any illegality in promoting the unofficial respondents and not giving promotions to the petitioners. There are several allegations against the petitioner in W.P. 11652 of 2005, such as, negative attitude towards development of the bank, argumentative with the superiors, unfriendly to the customers and a

memo dated 22.1.1986 was issued to him by the Administrative Officer of the bank listing eight of his deficiencies. Even against the petitioners in W.P. 11651 of 2005 there are several adverse remarks. The petitioners did not obtain the minimum benchmark for selection i.e. minimum marks which would entitle a candidate to be promoted on the basis of seniority-cum-merit. With regard to the allegation of the petitioner in W.P. 11627 of 2005 that the rule of reservation is not followed, it is stated that the petitioner having participated in the selection process cannot challenge it on the premise that 15% of the posts have not been reserved for SC candidates. Unless the SC or ST candidate is within the zone of consideration of number of vacancies available, he would not be promoted solely on the basis of seniority. As he does not fall within the zone of consideration of the vacancies available, he is not entitled to any benefit in terms of the guidelines of the Government of India. There are no grounds to challenge the action of the respondent-Bank in not giving promotions to the petitioners as the same is done perfectly in accordance with the Rules and the Circulars in vogue and hence the writ petitions may be dismissed.

Learned counsel for the petitioner in W.P. 11627 of 2005 contended that the promotion from Scale-I to Scale-II is 100 per cent by way of seniority-cum-merit; that the unofficial respondents are juniors to the petitioner; that the rules provide for both recruitment and promotion and therefore the reservation in promotion has to be taken into consideration in view of the fact that 4 candidates belonging to the reserved category were selected in Open Category and the respondents did not apply the rule of reservation in promotion. He

further contended that in W.P. 11651 of 2005 and W.P. 11652 of 2005 though the petitioners therein were successful, the petitioners therein were denied promotion on the ground of some adverse entries. He further contended that no adverse remarks have been communicated and hence they cannot be taken as a ground for denial of promotion.

On the other hand, learned counsel for the unofficial respondents contended that the notification is not under challenge. As per the promotion policy notified by the Government of India, the respondent bank has also issued Circular dated 13.2.1997 that there is no provision for reservation of the posts for promotion from Officers JMGS-I to MMGS-II cadre and therefore the writ petitions are devoid of merit. He also relied upon certain decisions which will be referred to later.

Learned counsel appearing for the respondent-Bank stated that when memos have been served on the petitioner in W.P. 11652 of 2005, no reply was given. The learned counsel appearing for the other respondents in other writ petitions contended that reservation does not apply to the posts in view of the zone of consideration of the number of vacancies available and the selection was based upon seniority-cum-merit. Hence he prays to dismiss the writ petitions.

The case of the petitioners in W.P. 11651 of 2005 is that the promotion to Scale-II from Scale I is based upon seniority-cum-merit. Once the petitioners qualify in the written examination, then seniority alone is the criterion for selection. Since no minimum marks are prescribed for interview, the marks secured in interview cannot be

taken as a criterion.

The bank vide its proceedings dated 12.1.2005 proposed to give promotions from Scale I to Scale-II Officers. The number of vacancies are six. The mode of eligibility criteria and selection for promotion is in accordance with Bank's Circular dated 14.3.2000. The written examination was scheduled on 20.2.2005. The petitioners were qualified in the written examination. The rules dated 27.3.1998 governing the service conditions of the petitioners were issued by the Government of India, which are called as **Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1998.** As per III Schedule, the Committee consists of Chairman of the concerned Regional Rural Bank as the Chairman of the Committee, a director nominated by the sponsor bank as member and a director nominated by the National Bank as another member. The number of candidates to be considered for promotion from Officer Scale I to Officer Scale II shall be restricted to four times the number of vacancies available for promotion. The selection process for promotion is that the selection shall be on the basis of performance in the written test, interview and Performance Appraisal Reports for preceding five years as per the division of marks, namely, 60 marks for written test, 20 marks for interview and 20 marks for Performance Appraisal Reports, totaling to 100 marks. Written test comprises of two parts viz. Part (A) and Part (B) and each consists of 30 marks. A list of only those candidates who secured a minimum of 40% marks in each part shall be prepared and such candidates shall be called for interview. But, there is no such minimum qualifying marks for the interview.

It is not in dispute that the promotion shall be made on the basis of seniority-cum-merit. The contention of the learned counsel for the petitioners is that when a person qualifies in the written examination, there is no need to take the minimum qualifying marks in the interview and Performance Appraisal Reports and he has to be selected basing on the seniority-cum-merit. But as per the Rules, the selection shall be on the basis of performance in the written test, interview and Performance Appraisal Reports. If the contention of the learned counsel for the petitioners is accepted, then there is absolutely no need to conduct any interviews and see the Performance Appraisal Reports. To know whether the performance of an officer is good so as to give promotion, as per the selection procedure for promotion the total marks secured in the written test, interview and Performance Appraisal Reports shall have to be taken into consideration. Suppose if the petitioners secure less number of marks than the unofficial respondents, then by virtue of seniority even though respondents 2 to 7 secured higher marks in overall performance, still the petitioners have to be promoted.

Even the learned counsel for the petitioners relied upon a decision in **B.V. Sivaiah v. K. Addanki Babu** wherein it is held that the performance evaluation of the competing employees cannot be done under the system. The employee is at liberty to assess the minimum necessary merit of the eligible employees and a senior with less merit can get the promotion even if the meritorious junior is available provided the senior is having the minimum necessary merit.

Learned counsel for the respondent No.1 in W.P. 11651 of 2005 contended that the Performance Appraisal Reports of the

petitioner for the last 5 years preceding the selection are not up to the mark; that the petitioner being a responsible Branch Manager is in the habit of absenting himself unauthorisedly. He lacks commitment towards work and certain memos were issued informing the petitioner about his poor performance. Basing on the confidential reports, he was not selected.

Learned counsel for the respondents placed strong reliance on a decision of the apex Court in **State of U.P. v. Yamuna Shanker Misra** wherein it is held:

> "It would thus, be clear that the object of writing the confidential reports and making entries in the character rolls is to give an opportunity to public servant to improve excellence".

There is no doubt about the above proposition of law. Here is a case where certain memos were also issued. A demi-official letter was also issued to him (petitioner in W.P. 11652 of 2005) informing of his failure to submit final replies to the branch audit report, even after lapse of six months. The Board expressed displeasure for non-submission of compliance of audit report. Therefore the Committee considered the cases of 13 candidates called for interview on 20.5.2005 and selected respondents 2 to 7 for promotion, who have crossed the benchmark. Even though the benchmark has not been stated in the counter affidavit for selecting respondents 2 to 7, but at the same time no mala fides are attributed against the selection committee. It is for the selection committee to fix up the benchmark for selection of candidates. If the petitioner crosses

that benchmark irrespective of the fact that he secured less marks or more marks than respondents 2 to 7, he should be selected basing on the seniority-cum-merit principle. There is no dispute about that fact. It is not the case of the petitioner that he crossed the benchmark set out by the selection committee. It is only his case that he passed the written examination, therefore, basing on the principle of seniority-cum-merit he is entitled for promotion. The said contention is untenable in view of the fact that the performance in the written test, interview and Performance Appraisal Reports have to be taken into consideration. Simply because on earlier occasions the post has been filled duly taking into consideration the seniority, it does not mean it should be treated as on seniority-cum-merit basis. The principles of seniority-cum-merit and merit-cum-seniority are conceptually different, for the former greater emphasis is laid on seniority though it is not determinative factor while in the latter merit is the determinative factor. Even where the promotion is based on seniority-cum-merit, the officer cannot claim promotion as a matter of right by virtue of his seniority alone and if he is found unfit to discharge the duties of the higher post, he may be passed over and an officer junior to him may be promoted.

It is well settled that while exercising the power of judicial review the court is more concerned with the decision making process than the merit of the decision itself. While examining and scrutinizing the decision making process, it becomes inevitable to appreciate the facts of a given case as otherwise the decision cannot be decided under the grounds of illegality, irrationality or procedural impropriety. To a limited extent of scrutinizing the decision making process, it is always open to the court to review the evaluation of the facts of its

maker.

It is not a case of arbitrary exercise of fixing up of benchmark by the selection committee. Since the petitioners have not crossed the benchmark, rightly respondents 2 to 7 were given promotions. As per the proceedings of the 1st respondent-Bank dated 28.8.2000, the process of promotion/selection shall be on the basis of overall performance in the written test, interview and 5 years' Performance Appraisal Reports. Even though no minimum marks are stipulated for performance appraisal and interview, the final selection shall be based on aggregate marks of written test, performance appraisal and interview. The benchmark for selection i.e. minimum marks which would entitle a candidate to be promoted on the basis of seniority-cum-merit will be determined by the appointing authority i.e. the Chairman of the Bank in consultation with other members of the selection committee. Therefore, these guidelines would clearly go to show that if a person crosses the benchmark, then only he would be eligible for promotion. Hence W.P. 11651 of 2005 is devoid of merit.

W.P. 11652 of 2005 is filed by the petitioner seeking promotion to the post of Officers Scale I from the post of Clerk-cum-Cashier. It is not disputed before this Court that the selection process consists of written test, interview and performance appraisal reports. 70 marks are allotted to the written examination, 20 marks are allotted to the Interview and 10 marks are allotted for performance appraisal. The written test comprises of two parts and 35 marks are allotted to each of them. The candidate who secures 40% marks in each of those parts will be eligible for interview. There are no qualifying marks for the interview. The same reasoning adopted in W.P. 11651 of 2005

would apply in this case also. In this case also no mala fides are attributed against the selection committee. It is specifically contended in the counter affidavit filed by the 1st respondent that the petitioner not only did not achieve the benchmark but there were several adverse remarks in his annual confidential reports. Since the petitioner has not crossed the benchmark in overall performance as prescribed by the selection committee, he is not entitled for selection. Therefore the writ petition is devoid of merit.

The grievance of the petitioner in W.P. 11627 of 2005 is that no vacancy is reserved out of 6 posts notified and that there is a reservation in promotion for officers and hence he prays to allow the writ petition.

There is no dispute that when there is a direct recruitment of officers on All India basis, there shall be reservation of 15% for the candidates belonging to Scheduled Castes and 7½% for the candidates belonging to Scheduled Tribes. Clause 2.9 of the said Rule of Reservation states that there is no reservation in promotion by selection within the officer's cadre. Reservations are, however, applicable if the promotions, even within the officers cadre, are based on 'seniority' subject to fitness. As per Rule 12 of the Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules, 1998 there shall be reservation of posts for the Scheduled Castes, Scheduled Tribes, other backward classes and other categories of persons in such proportion as may be specified by the Central Government from time to time. So, if the Central Government issues any notification for the posts to be filled from the category of SCs and STs, the same can be given. The contention of

the respondent-bank with regard to the promotions is that there is no in-cadre reservation for promotions but the reservation is only at the entry stage i.e. for promotion from Clerical cadre to JMGS-I Officer cadre. There is no dispute regarding the method of filling of posts by 100% promotion on the basis of seniority-cum-merit.

Learned counsel for the petitioner herein relied upon an unreported decision of a learned single Judge of this Court in W.P. 534 of 2000 and batch dated 8.4.2005 wherein it is held:

> "therefore it follows that wherever any promotion is contemplated from one cadre to the other, necessarily the reservation has to be applied and the respondent can not take any shelter on the ground that there being no such direct recruitment".

On the other hand, learned counsel for the respondents relied upon an unreported decision of a Full Bench of this Court in W.P. 34717 of 1998 dated 6.4.2001 wherein it is held:

> "it is also well settled that no writ in the nature of Mandamus can issue directing the State to provide for reservation policy when there exists none".

The learned counsel for the respondents also relied upon an unreported decision of the apex Court in Special Leave Petition No.6441 of 1995 dated 20.5.1994 wherein it is held:

> "In our opinion, the petitioners cannot get the benefit of the instructions of the Central Government contained in Office Memorandum dated the 25th April, 1980 as it envisages reservation in those cases of appointment where the element of direct recruitment, if does

> not exceed 75%. In the instant case, admittedly, there is no element of direct recruitment and the posts are to be filled only by promotion from amongst the Officers in the Officers' cadre. This being so, the petitioners' grievance is misconceived and there is no illegality or infirmity in granting promotion to respondents Nos. 6 and 7 in preference to the petitioners".

In view of the above decision it is clear that where the element of direct recruitment does not exceed 75% as per the Central Government instructions, the posts are to be filled only by promotion from amongst the feeder categories. The apex Court basing on the circulars issued by the Central Government dated 25.4.1990 came to such conclusion because, admittedly, in that case the petitioners therein have not brought to the notice of their Lordships any other instructions of the Central Government providing for reservation in favour of Scheduled Castes/Scheduled Tribes Officers in promotion to the next higher post the Officers' cadre where the only source of recruitment to the next higher post is by promotion. Therefore, the above decision has application to the facts of this case since in this case Rule 12 of the Rules, 1998 indicates that there shall be reservation for the posts of SCs and STs in such promotion as may be specified by the Central Government. A learned single Judge of this Court in the abovementioned unreported judgment (W.P. 534 of 2000 & batch) observed:

> "as per Rule 12 of the Rules, 1998 dated 29.7.1998, it is contemplated that there shall be reservation for the SCs., STs., and other categories of persons in such promotion as may be prescribed by the Central Government from time to time. Further, even as per the

> instructions dated 23.11.2000 issued by the NABARD, it was contemplated to follow the policy to provide 15% reservation to SCs and 7.5% to STs in promotion to all classes of posts/services made on the basis of seniority subject to fitness, in which the element of direct recruitment, if any, does not exceed 75%".

It is stated by the respondents that as per the promotion policy notified by the Government of India, there is no provision for reservation of the posts for promotion from Officers JMGS-I to MMGS-II cadre. However, the principle of zone of consideration will be followed. The Government of India also prescribed that the promotions of SC/ST officers who are senior enough for the zone of consideration are to be within the number of vacancies for which the selection list has to be drawn and they would be included in that list provided they are not considered unfit for promotion. Therefore the case of the respondents is that in this case the petitioner does not come within the zone of consideration of number of vacancies available as he was positioned at Sl.No.12 in the officers eligible for promotion and there are only 6 posts and hence he is not entitled to any benefit of reservation under the category of 15% reservation. No doubt, the Rules prescribe for providing reservation in promotions, but at the same time the same is subject to the instructions issued by the Government of India. No instructions are brought to the notice of this Court that even in case of 100% promotions the candidates belonging to SCs & STs are entitled for promotion to a particular extent.

Therefore, for the aforesaid reasons and following the

judgment of the apex Court referred above, it cannot be said that the action of the respondents in filling up six posts without providing one post for Scheduled Caste candidate is illegal and arbitrary.

In the result, all the three writ petitions are dismissed as devoid of merit.

_____

K.C. Bhanu, J.

Date: 27--07—2005.

MVB.